

FILED
Clerk
District Court

FEB 29 2024

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN MARIANA ISLANDS

for the Northern Mariana Islands

(Deputy Clerk)

Imperial Pacific International (CNMI) LLC,

Case No. 1:24-cv-00001

Plaintiff,

v.

Commonwealth of the Northern Mariana Islands, Arnold Palacios, governor of CNMI, in his official and personal capacities; Edward C. Deleon Guerrero, Chairman of CCC, in his official and personal capacities; Rafael S. Demapan, Vice Chairman of CCC, in his official and personal capacities; Mariano Taitano, Commissioner of CCC, in his official and personal capacities; Martin Mendiola, Commissioner of CCC, in his official and personal capacities; Ramon M. Dela Cruz, Commissioner of CCC, in his official and personal capacities; Andrew Yeom, Executive Director of CCC, in his official and personal capacities;

Defendants.

**MEMORANDUM DECISION
DENYING PLAINTIFF'S
EMERGENCY MOTION FOR
TEMPORARY RESTRAINING
ORDER**

On February 23, 2024, Plaintiff Imperial Pacific International (CNMI), LLC ("IPI"), brought this civil action against Defendants Commonwealth of the Northern Mariana Islands ("CNMI"), Governor Arnold Palacios, Commonwealth Casino Commission ("CCC" or "Commission") Chairman Edward Deleon Guerrero, CCC Vice Chairman Rafael Demapan, CCC Commissioner Mariano Taitano, CCC Commissioner Martin Mendiola, CCC Commissioner

1 Ramon Dela Cruz, and CCC Executive Director Andrew Yeom in their official and personal
2 capacities (collectively, “Defendants”). (Compl., ECF No. 1.) Three days later, IPI filed a motion
3 for temporary restraining order (“TRO”) (“Mot.,” ECF No. 2) supported by Plaintiff’s Points and
4 Authorities (ECF No. 3), affidavits of Howyo Chi (ECF No. 3-2) and Michael Chen (ECF No. 3-
5 1), supplemental affidavit of Howyo Chi (ECF No.7), and various exhibits (ECF Nos. 3-3-3-17).
6 IPI sought a TRO and preliminary injunction restraining Defendants from conducting a revocation
7 hearing regarding IPI’s exclusive casino gaming license scheduled for February 28, 2024. (Mot.
8 1.) On February 27, 2024, the matter came before the Court for a hearing. (Mins., ECF No. 8.)
9 During which time, after hearing arguments from both parties, the Court DENIED the motion. (*Id.*)
10 The Court memorializes its reasons as follows.

11 I. BACKGROUND

12 In 2014, the CNMI sought to issue its first exclusive casino gaming license. Decision &
13 Order, *Best Sunshine Int’l LTD (BVI) v. Commonwealth Casino Commission*, No. 1:22-cv-00007
14 (D. N. Mar. I. Oct. 6, 2023) ECF No. 52 at 2. Later that same year, Best Sunshine International
15 Limited (BVI) (“Best Sunshine”) was selected to be the licensee, the Commonwealth License
16 Agreement (“CLA”) was prepared, and Best Sunshine formed IPI to enter into the CLA with the
17 CNMI. (*Id.*) Although the original authority over granting the exclusive casino license was vested
18 in the Commonwealth Lottery Commission, Public Law 18-63 and the CLA expressly ended that
19 authority upon issuance of the license. (CLA 2, ECF No. 1-1.) The CCC thereafter, among other
20 things, possessed the power to suspend and revoke IPI’s license in accordance with the CNMI’s
21

1 Administrative Procedure Act where violations occurred. (*Id.*) Additionally, upon IPI's material
2 breach of the CLA, the CLA also grants the CNMI powers to suspend and revoke IPI's license.
3 (*Id.* at 20.)
4

5 Under the CLA, IPI was to pay \$15 million in an annual casino license fee. (*Id.* at 6.) On
6 December 4, 2015, the CNMI promulgated Public Law 19-24, imposing a \$3 million annual
7 regulatory fee on IPI. 4 CMC § 2309. Pursuant to 4 CMC § 2309, the regulatory fee covers costs
8 such as
9

10 those associated with the licensing, testing certification, auditing and approval
11 of all casino slots and other gaming machines, casino table games and all other
12 casino gaming activities conducted by the exclusive casino licensee at the
13 licensed casino and regulated by the Commission as well as the costs of all
14 applications, including their review, renewal and all related investigations, for
15 licensing or permit or consent for casino employee licensees, casino key
employee licenses.

16 After making payments for the first few years, IPI was unable to make payments as
17 required for the annual regulatory fee, annual license fees, and Community Benefit Fund for a few
18 years. (Compl. ¶ 23.) As such, in 2020 the CCC Executive Director filed complaints against IPI
19 with the CCC for failure to pay the annual license fee, accounts payable, and the regulatory fee for
20 2020 and for failure to make Community Benefit Contributions and maintain a requisite amount
21 of cash reserves. Decision & Order 2, *Best Sunshine Int'l LTD (BVI)*. On April 22, 2021, the CCC
22 held a hearing on these complaints and ultimately suspended IPI's gaming license, ordered IPI to
23 pay \$18.65 million that was due, and imposed \$6.6 million in penalties. (Compl. ¶ 28.)
24
25
26
27
28

1 Thereafter, IPI appealed the CCC's ruling with the Superior Court of the CNMI. (*Id.* ¶
2 29.) The Superior Court affirmed the CCC's ruling, and IPI appealed. (*Id.* ¶¶ 29-30.) The CNMI
3 Supreme Court affirmed the Superior Court's ruling in-part and reversed in-part. (*Id.* ¶ 32.) Upon
4 the CNMI Supreme Court's ruling, the CCC was to decide a reasonable deadline for IPI to pay the
5 annual license fee for 2020 and the following years, and the CCC set a deadline of thirty days. (*Id.*
6 ¶¶ 32-33.)

7
8 In September 2021, Executive Director Andrew Yeom of the CCC filed five complaints
9 against IPI with the CCC for: (1) failure to pay annual license fee for the year 2020; (2) failure to
10 maintain minimal capital requirements; (3) failure to pay annual regulatory fee for the year 2020;
11 (4) failure to pay annual license fee for the year 2021; and (5) failure to pay annual regulatory fee
12 for the year 2021. (*Id.* ¶ 34.)

13
14 A day before the CCC's scheduled revocation hearing, on May 23, 2022, IPI filed a civil
15 action seeking an injunction in aid of arbitration, an order compelling arbitration, an order
16 appointing an arbitrator, and a TRO. Decision & Order 3, *Best Sunshine Int'l LTD (BVI)*. The
17 Court granted the TRO that same day, directed IPI to post a \$100,000 security bond within two
18 days, and set a hearing to determine IPI's motion for an injunction to continue the enjoinder of
19 the CCC revocation hearing and to compel arbitration. *Id.* The CCC filed an appeal, and the Ninth
20 Circuit reversed this Court's decision. *Id.*

1 Subsequently, the CCC scheduled a revocation hearing against IPI for February 28, 2024.
2 (Mot. 3.) IPI now seeks in its motion a TRO restraining Defendants from conducting the revocation
3 hearing. (*Id.*)

4 II. LEGAL STANDARD

5
6 Federal Rule of Civil Procedure 65 governs TROs. “The standard for issuing a TRO is the
7 same as that for issuing a preliminary injunction . . .” *Blain v. Cal. Dep’t of Transp.*, 616 F. Supp.
8 3d 952, 956 (N.D. Cal. 2022). A “preliminary injunction is not a preliminary adjudication on the
9 merits, but a device for preserving the status quo and preventing the irreparable loss of rights before
10 judgment.” *Textile Unlimited, Inc. v. A..BMH & Co.*, 240 F.3d 781, 786 (9th Cir. 2001). “[It] is an
11 extraordinary remedy never awarded as of right.” *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S.
12 7, 24 (2008) (citing *Munaf v. Geren*, 553 U.S. 674, 689 (2008)). Courts apply a four-factor test to
13 determine whether to grant a preliminary injunction or TRO. “A plaintiff seeking a preliminary
14 injunction must establish that he is likely to succeed on the merits, that he is likely to suffer
15 irreparable harm in the absence of preliminary relief, that the balance of equities tips in his favor,
16 and that an injunction is in the public interest.” *Id.* at 20. This is the same for TROs. *Blain*, 616 F.
17 Supp. 3d at 956.

18
19 “Alternatively, the court may issue a preliminary injunction if the plaintiff demonstrates
20 that ‘serious questions going to the merits’ have been raised and ‘the balance of hardships tips
21 sharply in the plaintiff’s favor’ in addition to satisfying the other *Winter* factors.” *Cmmw. Utils.*
22 *Corp. v. Johnson*, 218 F. Supp. 3d 1136, 1142 (D. N. Mar. I. 2016) (citing *All. for the Wild Rockies*
23
24
25
26
27
28

1 v. *Cottrell*, 632 F.3d 1127, 1134-35 (9th Cir. 2011)). This approach is commonly called the
2 “serious questions test”: “‘serious questions going to the merits’ and a balance of hardships that
3 tips sharply towards the plaintiff can support issuance of a preliminary injunction, so long as the
4 plaintiff also shows that there is a likelihood of irreparable injury and that the injunction is in the
5 public interest.” *Id.* at 1135. “Serious questions” are questions that “cannot be resolved one way
6 or the other at the hearing on the injunction and as to which the court perceives a need to preserve
7 the status quo lest one side prevent resolution of the questions . . . by altering the status quo.”
8 *Gilder v. PGA Tour, Inc.*, 936 F.2d 417, 422 (9th Cir. 1991) (quoting *Republic of the Philippines*
9 *v. Marcos*, 862 F.2d 1355, 1362 (9th Cir. 1988) (en banc)). Serious questions “need not promise a
10 certainty of success, nor even present a probability of success, but must involve a ‘fair chance of
11 success on the merits.’” *Id.* (quoting *Nat’l Wildlife Fed’n v. Coston*, 773 F.2d 1513, 1517 (9th Cir.
12 1985)).

13 III. DISCUSSION

14 After consideration of the *Winter* factors, the Court found that IPI had not met its burden;
15 in particular, IPI did not demonstrate that it is likely to succeed on the merits nor that the public
16 interest tips in its favor.

17 A. Likelihood of Success on the Merits

18 IPI asserted four substantive causes of action alleging (1) unconstitutional impairment of
19 contract and violation of the contract clauses of the U.S. and CNMI Constitutions, (2) violation of
20 the Due Process Clauses of the U.S. and CNMI Constitutions, (3) violation of Article IV of the
21

CNMI Constitution, and (4) breach of the CLA. (Compl. 1.) In neither briefing nor oral arguments did IPI demonstrate likelihood of success on any of these claims.¹

1. Unconstitutional Impairment of Contract and Violation of the Contract Clauses of the U.S. and CNMI Constitutions

For IPI's first cause of action, IPI does not specifically contend in its Complaint that the imposition of the \$3 million annual regulatory fee pursuant to 4 CMC § 2309(a) impaired the financial obligations of the parties established under the CLA. (*See* Compl.) However, liberally construing the Complaint, the Court concludes IPI alleged sufficient facts to argue this point.

For an impairment of contract claim, "[g]enerally [the Ninth Circuit asks] whether the change in state law has 'operated as a substantial impairment of a contractual relationship.'" *Gen. Motors Corp. v. Romein*, 503 U.S. 181, 186 (citations omitted). "This inquiry has three components: [1] whether there is a contractual relationship, [2] whether a change in law impairs that contractual relationship, and [3] whether the impairment is substantial." *Id.* at 1109.

Here, it is clear there is a contractual relationship between the CNMI and IPI. This Court has recognized this in its Memorandum Decision in *Best Sunshine International LTD (BSI)*:

The Commonwealth License Agreement was prepared, and Best Sunshine formed IPI to enter into the CLA with the CNMI. On August 12, 2014, Ms. Cai Ling Li, director of IPI, executed the CLA on behalf of IPI, and the Commonwealth Lottery Commission executed the CLA on behalf of the CNMI, which was approved by Gilbert Birnbrich, Acting Attorney General of the CNMI.

¹ The Court need not address Defendants' affirmative defense of res judicata raised at oral arguments because IPI has not met its burden to establish likelihood of success on the merits.

Memorandum Decision 2, *Best Sunshine Int'l LTD (BVI) v. Commonwealth Casino Commission*, No. 1:22-cv-00007 (D. N. Mar. I. Sept. 26, 2023) ECF No. 32 at 2-3. However, IPI does not allege, nor is there a clear contractual relationship between IPI and the listed Defendants—besides the CNMI—that IPI also seeks a TRO and preliminary injunction against. As to the second element, there does appear to be a change in law imposing obligations on IPI to pay an additional \$3 million dollars annually for a regulatory fee pursuant to 4 CMC §2309. (Compl. ¶ 20 (“On December 4, 2015[,] CNMI promulgated Public Law 19-24, which imposes a new obligation on IPI to pay CCC an annual ‘Casino Regulatory Fee’ of three million dollars (\$3,000,000.00) on or before October 1 of each year beginning October 1, 2015 (‘Regulatory Fee Statute’).”).)

As to the final prong of analysis—whether the impairment is substantial—“[a]n impairment of a contract is substantial if it deprives a private party of an important right, thwarts performance of an essential term, defeats the expectations of the parties, or alters a financial term.” *HRPT Props. Tr. v. Lingle*, 715 F. Supp. 2d 1115, 1136 (D. Haw. 2010) (citing *S. Cal. Gas Co. v. City of Santa Ana*, 336 F.3d 885, 890 (9th Cir. 2003)). “A court must focus on ‘the importance of the term which is impaired, not the dollar amount,’ when determining substantiality. Thus, if a law completely destroys contractual expectations, a severe impairment exists, but if a law only restricts a party to gains it reasonably expected from the contract, no substantial impairment exists.” *Id.* (citations omitted).

A court must also consider “whether the industry the complaining party has entered has been regulated in the past.” *Campanelli v. Allstate Life Ins. Co.*, 322 F.3d 1086, 1098 (9th Cir.

1 1999). If the industry has been heavily regulated, then the impairment is less severe because ‘one
2 whose rights, such as they are, are subject to state restriction, cannot remove them from the power
3 of the State by making a contract about them.” *Id.* For the CNMI casino industry, although there
4 is not an indication of heavy regulation in the past, casino industries as a whole are highly regulated
5 areas of business.
6
7

8 The Court focuses on the only contractual relationship that exists, which is between IPI
9 and the CNMI. The new statute that imposed an additional \$3 million on IPI for a casino regulatory
10 fee cannot be said to completely destroy IPI’s contractual expectations. However, “[c]ourts have
11 also held that when a governmental entity is a party to the contract allegedly impaired, less
12 deference to the governmental entity is appropriate due to the ‘self-serving’ nature of the
13 governmental entity’s action.” *Pac. Gas & Elec. Co. v. City of Union City*, 220 F. Supp. 2d 1070,
14 2086 (N.D. Cal. 2002).
15
16
17

18 Here, although IPI and the CNMI have a contractual relationship, the Court does not find
19 that the imposition of the additional \$3 million annual regulatory fee constitutes a substantial
20 impairment under the TRO standard. IPI admits to paying these fees for the first several years of
21 its operation and therefore should have reasonably expected to pay this fee in subsequent years.
22 (See Pl.’s Points & Authorities 7 (“Nonetheless, through the first several years under the CLA, IPI
23 invested hundreds of millions of dollars toward development of the project and was able to meet
24 these onerous fees.”) Further, the CLA permitted IPI to “terminate [the CLA] upon the adoption
25 of the change in law” that prohibits performance of the CLA, which IPI chose not to pursue. (CLA
26
27
28

1 17-18.) IPI's behavior of paying the regulatory fee after its enactment under 4 CMC § 2309 is
2 inconsistent with the Court finding that its enactment "completely destroy[ed] contractual
3 expectations," as IPI now argues. See *HRPT Props. Tr.*, 715 F. Supp. 2d at 1136.
4

5 Therefore, because IPI has not demonstrated a contractual relationship between IPI and the
6 other defendants, other than the CNMI, the Court concludes that IPI is unlikely to succeed on the
7 merits. As to IPI's allegation of CNMI's contractual impairment, the Court also finds it is unlikely
8 to succeed on the merits for the reasons stated above.
9

10 The Court does not find that 4 CMC § 2314 nullifies the CLA that the CNMI and IPI
11 entered into, nor does the statute substantially impair IPI's contractual relationship. The CLA
12 already grants the CNMI and the CCC many different rights. The CLA permits the CCC to
13 "establish separate rules and regulations as to gaming operations which shall have additional
14 procedures for license suspension or revocation." (CLA 20, ECF No. 1-1.) It appears that IPI's
15 main contention in the CNMI's enactment of 4 CMC § 2314, is that the statute "imposes
16 completely unexpected and new liabilities and limitations on the operation of IPI." (Pl.'s Points &
17 Authorities 18.) However, IPI ignores powers already conferred to the CCC by the CLA. As such,
18 the Court finds that the enactment of 4 CMC § 2314 constitutionally impairing IPI's contract rights
19 is not likely to succeed.
20
21
22
23

24 **2. Violation of the Due Process Clauses of the U.S. and CNMI Constitutions**

25 A claim for violation of due process must have three elements: "(1) a property interest
26 protected by the Constitution; (2) a deprivation of the interest by the government; and a (3) lack
27
28

1 of required process.” *Deleon Guerrero v. CNMI State Bd. of Educ.*, 18-CV-00006, 2018 WL
2 2437582, at *3 (D. N. Mar. I. May 30, 2018) (citing *Ulrich v. City and Cnty. of San Francisco*,
3 308 F.3d 968, 974 (9th Cir. 2002). The property interest is established by “an independent source
4 such as state law—rules or understandings that secure certain benefits and that support claims of
5 entitlement to those benefits.” *Id.* (internal quotation marks and citation omitted); see *Braswell v.*
6 *Shoreline Fire Dept.*, 622 F.3d 1099, 1102 (9th Cir. 2010).

7
8 IPI maintains that the CCC is acting in a judicial or quasi-judicial role in which the decision
9 makers have a financial interest in the outcome of the case and a conflict arises from decision
10 makers’ roles in earlier proceedings. (Pl.’s Points & Authorities 21.) IPI makes broad statements
11 that the decisionmakers have a financial outcome in the case without identifying who the
12 decisionmakers are. Further, IPI asserts the Commissioners and the Executive Director of the CCC
13 are paid “from the annual regulatory fees and fines and penalties collected from IPI.” (*Id.*) IPI does
14 not clarify the role each Defendant plays in the revocation hearings. Pursuant to NMIAC § 175-
15 10.1-1410, at contested case hearings, the Chairman may designate a member of the CCC to serve
16 as hearing commissioner. NMIAC also dictates other discretionary choices in proceedings. Due to
17 this, it is unclear the role that each Defendant plays in the revocation proceeding scheduled for
18 February 28, 2024, and thus, difficult for the Court to determine if there is conflict.

19
20 The Due Process Clause does entitle “a person to an impartial and disinterested tribunal in
21 both civil and criminal cases.” *Marshall v. Jerrico, Inc.*, 446 U.S. 238, 242 (1980).
22
23
24
25
26
27
28

1 The requirement of neutrality has been jealously guarded by this Court. In
2 *Tumey v. Ohio, supra*, the Court reversed convictions rendered by the mayor of
3 a town when the mayor's salary was paid in part by fees and costs levied by
4 him acting in a judicial capacity. The Court stated that the Due Process Clause
5 would not permit any "procedure which would offer a possible temptation to
6 the average man as a judge to forget the burden of proof required to convict the
7 defendant, or which might lead him not to hold the balance nice, clear and true
8 between the state and the accused."

9 *Id.* at 243 (citation omitted).

10 IPI contends that these principles compel the conclusion that the conflict of interest violates
11 the Due Process Clauses of the U.S. and CNMI Constitutions. However, it is unclear from the
12 pleadings who exactly would have this conflict. In *Marshall*, the Supreme Court found that an
13 individual who was bestowed with the authority to assess whether there has been a statutory
14 violation was akin to a prosecutor or civil plaintiff and not that of a judicial or quasi-judicial role.
15 446 U.S. at 247. Although some of the named Defendants likely serve in a judicial or quasi-judicial
16 role, it is not clear from the pleadings that they all do. In fact, IPI states that Executive Director
17 Andrew Yeom filed motions with the CCC and requested a revocation hearing. (Pl.'s Points &
18 Authorities 13.) This would appear to fulfill more of the role of a civil plaintiff or prosecutor than
19 a judicial or quasi-judicial role. The Court emphasizes IPI's burden to demonstrate and elaborate
20 on this conflict in order to establish likelihood of success on the merits.
21
22
23

24 As to IPI's second claim that decision makers are conflicted because of their involvement
25 in an earlier proceeding, IPI cites to *Caperton v. A.T. Massey Coal Co., Inc.*, 556 U.S. 868 (2009).
26
27
28

1 First, IPI does not identify the parties that are overlapping between the proceedings scheduled for
2 the February 28, 2024, revocation hearing and the proceedings from the past.
3

4 Second, *Caperton* is not on point as to the facts of this action. In particular, the case
5 discusses criminal contempt cases in which a judge had no pecuniary interest in the case but
6 determined in an earlier proceeding if criminal charges should be brought and then proceeded to try
7 to convict the petitioners. *Id.* at 871. The court in that case “noted that circumstances of the case
8 and the prior relationship required recusal.” *Id.* However, this case does not involve criminal
9 defendants, and therefore “the rule that ‘a defendant in criminal contempt proceedings should be
10 [tried] before a judge other than one reviled by the contemnor’” is inapplicable to this case. *See id.*
11 (citation omitted). The moving party bears the burden of persuasion and must make a clear showing
12 that they are entitled to relief. *Winter*, 555 U.S. at 22. IPI’s broad statements that conflicts exist
13 between CCC decisionmakers and IPI are insufficient and thus the Court finds that it has not
14 established a likelihood of success on this claim.
15
16
17
18

19 **3. Violation of Article IV of the CNMI Constitution (Separation of Powers)**

20 IPI argues that pursuant to Article IV of the CNMI Constitution, the judicial power of the
21 Commonwealth shall be vested in the judiciary of the Northern Mariana Islands and “[t]he
22 Commonwealth superior court shall have original jurisdiction in all cases in equity and at law.”
23 CNMI Constitution, Art. IV, Section 2. However, there are only three cases in which CNMI courts
24 cite to this portion of the CNMI Constitution and none prove helpful in the article’s interpretation.
25
26 Thus, this is a matter of first impression. Further, the one case that IPI cites to, *Marine*
27
28

1 *Revitalization Corp. v. Department of Land & Natural Resources*, 2010 MP 18, does not support
2 its contention. Rather, that case involved, as to Article IV of the CNMI Constitution, what the
3 Superior Court may do, and not the delegation or separation of powers. IPI's argument as to this
4 point is cursory such that the Courts find that this factor does not support the issuance of a TRO.
5

6 **4. Breach of CLA**

7
8 For the breach of CLA claim, the Complaint asserts that the "CNMI breached the CLA by
9 bestowing powers upon CCC to function as a judicial office to interpret the terms of the CLA" and
10 CCC's function "as a judicial or quasi-judicial entity to interpret the CLA and adjudicate claims
11 arising out of the CLA constitutes a breach of the CLA." (Compl. ¶¶ 77, 82.) However, in its
12 motion, IPI asserts that it has a likelihood of success on the merits for the breach of the CLA claim
13 because it raises defenses to the revocation proceeding that are "question[s] to the forum selection
14 clause," which are distinct from the pending revocation proceedings. (Pl.'s Points & Authorities
15 22-24.) IPI's argument for breach of the CLA as outlined in the motion is untethered to its claim
16 as defined in the Complaint. Nevertheless, the Court address the breach of CLA claim as asserted
17 in both the Complaint and the Motion.
18
19
20
21

22 First, addressing the breach of CLA argument outlined in the Complaint, the CLA states
23 that CCC's authority "includes the ability to suspend or revoke the Casino License, in accordance
24 with the requirements of the Commonwealth Administrative Procedure Act, for violation of the
25 Rules." (CLA ¶ 3.) Thus, the plain language of the CLA grants the CCC the authority to conduct
26
27
28

1 revocation proceedings; there is no breach of contract, rather the CCC is acting within its powers
2 as outlined by the CLA.²
3

4 Second, in its Motion, IPI asserts that the forum selection clause is implicated. The CLA's
5 forum selection clause provides that the CLA "is to be interpreted under the laws of the
6 Commonwealth of the Northern Mariana Islands and the exclusive jurisdiction of the courts
7 thereof." (CLA ¶ 33.) It appears that IPI's argument is that it is raising defenses to purported bases
8 for revocation such as the annual regulatory fee and minimum capital level. (Pl.'s Points &
9 Authorities 24.) The annual regulatory fee is mandated by both CNMI statute, 4 CMC § 2309, and
10 CCC regulation, NMIAC §175-10.1-1225(b). The CLA provides that "[t]he continuing validity of
11 this License is conditional upon the Licensee's compliance with applicable laws, rules, and
12 regulations of the Commonwealth." (CLA ¶ 17.) Thus, IPI is obligated to comply with CNMI
13 statutes, including 4 CMC § 2309, which requires payment of the annual regulatory fee. Further,
14 the CLA requires the Commission to "establish separate rules and regulations as to gaming
15 operations which shall have additional procedures of license suspension or revocation." (CLA ¶
16
17
18
19
20
21

22 ² The CLA also provides that "[u]pon the occurrence of a Material Breach, the *Commonwealth* may, but shall not be
23 required to: (i) suspend or revoke this License Agreement and or cancel all associated duties and obligations; or (ii)
24 pursue any other remedy available at law or in equity." (CLA ¶ 31 (emphasis added).) Thus, it appears that the
25 Commonwealth, not just the Commission, has the ability to suspend and revoke the CLA. Thus, the authority to
26 suspend and revoke the CLA are bestowed upon both the Commission and the CNMI. This interpretation is further
27 buttressed by the following paragraph to the Commonwealth's ability to suspend or revoke the CLA, which states that
28 the Commission "shall establish separate rules and regulations as to gaming operations which shall have additional
procedures of license suspension or revocation." (*Id.*)

31.) Thus, the CLA authorizes CCC regulation, NMIAC §175-10.1-1225(b), which requires payment of the annual regulatory fee. The minimum capital level is also outlined by CCC regulation, NMIAC § 175-10.1-560. As just stated, the CLA authorizes the Commission to create such rules and regulations. Thus, the Court rejects IPI's arguments that there are issues that a CNMI court should resolve before the CCC holds its revocation proceedings.

Therefore, the Court concludes that IPI has not met its burden to demonstrate likelihood of success on the merits for its claim of breach of the CLA, or any of the other claims.

B. Irreparable Harm

A plaintiff seeking a preliminary injunction or a TRO must "demonstrate that irreparable injury is *likely* in the absence of an injunction." *See Winter*, 555 U.S. at 22 (rejecting the "possibility of harm" standard as too lenient). "Irreparable harm is traditionally defined as harm for which there is no adequate legal remedy, such as an award of damages." *Ariz. Dream Act Coal. v. Brewer*, 757 F.3d 1053, 1068 (9th Cir. 2014). "Evidence of loss of control over business reputation and damage to goodwill could constitute irreparable harm." *Herb Reed Enters., LLC v. Fla. Entm't Mgmt., Inc.*, 736 F.3d 1239, 1250 (9th Cir. 2013) (citing *Stuhlbarg Int'l Sales Co. v. John D. Brush & Co.*, 240 F.3d 832, 841 (9th Cir. 2001)). However, the element of harm must be grounded in evidence, rather than conclusory statements about harm that the petitioner might suffer. *Id.* Moreover, a "[s]peculative injury does not constitute irreparable injury sufficient to warrant granting a preliminary injunction." *Caribbean Marine Servs. Co. v. Baldrige*, 844 F.2d

1 668, 674 (9th Cir. 1988) (citing *Goldie's Bookstore, Inc. v. Superior Ct.*, 739 F.2d 466, 472 (9th
2 Cir. 1984)).

3
4 The Court concludes that IPI has demonstrated irreparable harm if a TRO is not issued. IPI
5 speculates on two fronts, but the most significant is the backing out of Kyosei Bank Group's
6 ("Kyosei") anticipatory infusion of money. (Pl.'s Points & Authorities 26.) Imperial Pacific
7 International Holdings Limited and Kyosei have signed a memorandum of understanding (ECF
8 No. 3-15) where the latter agreed to invest \$300 million to the former's subsidiary, Plaintiff IPI.
9 (ECF No. 3-2.) Kyosei has already provided \$20 million. (ECF No. 3-2 ¶ 34.) For the full
10 investment, IPI needs to "hold[] a valid exclusive and sole gaming license in CNMI." (ECF No.
11 3-15 ¶ 3(4).) Additionally, the "initial investment of \$150 million [will be infused] after the
12 suspension of IPI gaming license has been lifted." (*Id.* ¶ 2(2).) Thus, if the TRO is not granted
13 such that the revocation hearing is held and the gaming license is revoked, IPI could suffer
14 irreparable harm in the form of a lost investor. This Court has ordered IPI to "immediately halt
15 any and all work related to the construction and development of the IPI casino in Garapan, Saipan."
16 Order Finding Civil Contempt and Imposing a Stop Work Order, *Acosta v. IPI*, 1:19-cv-00007 (D.
17 N. Mar. I. Jan. 21, 2021), ECF No. 19.³ However, as this Court has explained, "the Stop Work
18 Order may be lifted by Court order upon" the satisfaction of multiple requirements, including
19
20
21
22
23
24

25
26 ³ The stop-work order is still in effect. See Order, *Acosta v. IPI*, 1:19-cv-00007 (D. N. Mar. I. Jan. 21, 2021), ECF
27 No. 37 ("The stop-work order originally imposed on January 21, 2021 (ECF No. 19) shall continue until further order
28 by the Court.").

1 several cash prerequisites. Order Continuing Civil Contempt Proceedings and Stop-Work Order,
2 *Acosta v. IPI*, 1:19-cv-00007 (D. N. Mar. I. Feb. 1, 2021), ECF No. 27. Thus, this cash infusion
3 from Kyosei could be a basis to lift the stop work order such that IPI could function again. As
4 such, the Court finds that this factor does support the issuance of a TRO.
5

6
7 **C. Balancing of the Equities**

8 Upon first blush, it appears that the harm to the Defendants if the TRO was granted is
9 minimal since the Commission has already granted several continuances of the revocation
10 proceeding from January 2024 to February 28, 2024. On the other hand, as outlined above, the
11 harm would be great for IPI if the TRO were not granted and the revocation hearing proceeded
12 and concluded with the revocation of the license. However, the Court emphasizes that IPI has not
13 demonstrated likelihood of success on the merits such that issuance of the TRO would be harmful
14 to Defendants. Therefore, this factor weighs against granting the TRO.
15
16

17
18 **D. Public Interest**


19 IPI's argument that the Court's issuance of a TRO and preliminary injunction would serve
20 the public interest because of the public's purported interest in the enforcement of the CLA's forum
21 selection clause is unconvincing because the CLA permits the CCC to initiate suspension or
22 revocation of the CLA license. (*See* CLA 20.) Further, the CNMI also is conferred rights under
23 the CLA with regards to suspension of the CLA or revocation. (*Id.*) Thus, the argument that this
24 supports public interest is unfounded in the contractual language of the CLA.
25
26
27
28

1 As to IPI's other argument, although preserving jobs and preventing significant negative
2 impact on the local economy, is of public interest in general, these reasons do not support IPI's
3 position. IPI currently has lawsuits against them from many employees in the federal and local
4 court. Moreover, IPI does not support its statement that jobs will be preserved other than through
5 speculation that IPI will be able to reopen. As such, the Court finds that the public interest is not
6 served through the issuance of a TRO or preliminary injunction.
7

8
9 **IV. CONCLUSION**

10 Based on the foregoing, the Court finds that IPI has not met its burden such that the Court
11 denies its emergency motion for a temporary restraining order.
12

13 IT IS SO ORDERED this 29th day of February 2024.
14

15 
16 _____
17 David O. Carter
18 Designated Judge
19
20
21
22
23
24
25
26
27
28